

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,	)	C.A. No. 15-542-JFB-SRF
)	
v.	)	JURY TRIAL DEMANDED
)	
APPLE, INC.,	)	PUBLIC VERSION
)	
Defendant.)	
EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,	)	C.A. No. 15-543-JFB-SRF
)	
v.	)	JURY TRIAL DEMANDED
)	
HTC CORPORATION, and	)	PUBLIC VERSION
HTC AMERICA, INC.,)	
)	
Defendants.)	
EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,	)	C.A. No. 15-544-JFB-SRF
)	
v.	)	JURY TRIAL DEMANDED
)	
LENOVO GROUP LTD., LENOVO (UNITED	)	PUBLIC VERSION
STATES) INC., and MOTOROLA MOBILITY)	
LLC,)	
)	
Defendants.)	
EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,	)	C.A. No. 15-545-JFB-SRF
)	
v.	)	JURY TRIAL DEMANDED
)	
SAMSUNG ELECTRONICS CO., LTD. and	)	PUBLIC VERSION
SAMSUNG ELECTRONICS AMERICA, INC.,)	
)	
Defendants.)	

EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,	)	C.A. No. 15-546-JFB-SRF
)	
v.	)	JURY TRIAL DEMANDED
)	
ZTE (USA) INC.,	)	PUBLIC VERSION
)	
Defendant.)	
)	
EVOLVED WIRELESS, LLC,)	
)	
Plaintiff,	)	C.A. No. 15-547-JFB-SRF
)	
v.	)	JURY TRIAL DEMANDED
)	
MICROSOFT CORPORATION, MICROSOFT	)	PUBLIC VERSION
MOBILE OY and NOKIA INC.,)	
)	
Defendants.)	
)	

**DEFENDANTS' OPENING BRIEF IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OF [REDACTED]
[REDACTED] TO U.S. PATENT NO. 7,809,373**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	NATURE AND STAGE OF THE PROCEEDINGS	2
III.	SUMMARY OF THE ARGUMENT	3
IV.	STATEMENT OF FACTS	3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V.	ARGUMENT	9
A.	Legal Standard	9

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI.	CONCLUSION.....	20
-----	-----------------	----

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	9
<i>Celotex Corp. v. Cattrett</i> , 477 U.S. 317 (1986).....	9
<i>Datatreasury Corp. v. Wells Fargo & Co.</i> , 522 F.3d 1368 (Fed. Cir. 2008)	20
<i>De Forest Radio Telephone & Telegraph Co. v. United States</i> , 273 U.S. 236 (1927).....	10, 19
<i>Epistar Corp. v. Int’l Trade Comm’n</i> , 566 F.3d 1321 (Fed. Cir. 2009)	20
<i>Impression Prod., Inc. v. Lexmark Int’l, Inc.</i> , 137 S. Ct. 1523 (2017).....	19
<i>Innovus Prime, LLC v. Panasonic Corp.</i> , No. C-12-00660-RMW, 2013 WL 3354390 (N.D. Cal. July 2, 2013)	20
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986).....	9
<i>Medtronic AVE, Inc. v. Advanced Cardiovascular Sys., Inc.</i> , 247 F.3d 44 (3d Cir. 2001)	20
<i>Podobnik v. U.S. Postal Serv.</i> , 409 F.3d 584 (3d Cir. 2005)	9
<i>Quanta Computer, Inc. v. LG Electronics, Inc.</i> , 128 S. Ct. 2109 (2008).....	19
<i>Semitool, Inc. v. Dynamic Micro Sys.</i> , 444 F.3d 1337 (Fed. Cir. 2006)	9
<i>TransCore, LP v. Elec. Transaction Consultants Corp.</i> , 563 F.3d 1271 (Fed. Cir. 2009)	10, 20

Statutes

Fed. R. Civ. P. 56.....	9
-------------------------	---

NOTES OF CITATIONS

The Declaration of Michael D. Jay in support of Defendants' Opening Brief ("Jay Decl.") references the majority of the documents relevant to the present motion and opening brief. For those portions of the brief where defendant-specific citations are required, the brief cites to sections of Appendix B, which is filed concurrently herewith. Each section of Appendix B maps the specific cites to each listed Defendant. The following declarations are cited in Appendix B, in support of defendant-specific portions of the brief:

- Declaration of Martin Bader in support of HTC's Motion ("Bader Decl.")
- Declaration of Todd M. Briggs in support of Samsung's Motion ("Briggs Decl.")
- Declaration of Kenneth Crisler in support of Motorola's Motion ("Crisler Decl.")
- Declaration of Heikki Heinaro in support of Microsoft's Motion ("Heinaro Decl.")
- Declaration of Waiman Lam, in support of ZTE's Motion ("Lam Decl.")
- Declaration of Taylor H. Ludlam in support of Motorola's Motion ("Ludlam Decl.")
- Declaration of Hersh H. Mehta in support of ZTE's Motion ("Mehta Decl.")
- Declaration of Seungkyun Oh in support of Samsung's Motion ("Oh Decl.")
- Declaration of Ellen S. Robbins in support of Microsoft's Motion ("Robbins Decl.")
- Declaration of Frank Wu in support of HTC's Motion ("Wu Decl.")

I. INTRODUCTION

[illegible]

¹ “Defendants” refers collectively to Apple Inc., HTC Corporation, HTC America, Inc., Lenovo (United States) Inc., Motorola Mobility LLC, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., ZTE (USA) Inc., Microsoft Corporation, Microsoft Mobile Oy, and Microsoft Mobile Inc. (f/k/a Nokia Inc.).

[illegible]

II. NATURE AND STAGE OF THE PROCEEDINGS

On June 25, 2015, Evolved filed six related actions against Defendants, asserting patent infringement claims on five patents declared “essential” to the Long-Term Evolution (“LTE”) wireless communications standard. (D.I. 1.) Evolved accuses various mobile devices that are compatible with LTE networks. Defendants answered Evolved’s Complaints, denying that they infringed the patents-in-suit and asserting numerous affirmative defenses and counterclaims. The parties have engaged in extensive fact and expert discovery. Fact discovery closed on April 10, 2017, and expert discovery closed on August 23, 2017.

In July 2017, after having litigated the patents-in-suit for over two years, and after defendants had served two rounds of expert reports (on invalidity and non-infringement), Evolved approached Defendants about dismissing three of the patents-in-suit. Ultimately the parties stipulated to dismissal of these three patents, leaving only two patents-in-suit: the '373

Case 1:15-cv-00543-JFB-SRF Document 216 Filed 09/07/17 Page 9 of 30 PageID #: 9849

III. SUMMARY OF THE ARGUMENT

On the following bases, Evolved's infringement claims as to the '373 patent are barred with respect to the accused products [REDACTED]:

1.

IV. STATEMENT OF FACTS

[illegible]

[illegible]

2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 [REDACTED]

[REDACTED]

V. ARGUMENT

A. Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact, and no reasonable factfinder could return a verdict for the non-moving party. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Civ. P. 56(a). To avoid summary judgment, the non-moving party must present significantly probative evidence that there is a genuine issue for trial. *Anderson*, 477 U.S. at 249-250.

Although evidentiary inferences must be drawn in favor of the non-moving party, Evolved must do more than “show that there is some metaphysical doubt as to the material facts,” or offer unsupported speculation. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 594 (3d Cir. 2005).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ [REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court to enter summary judgment finding that Evolved is barred from asserting its claims that Defendants infringe the '373 patent based on Defendants' Accused Products.

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Michael D. Jay
Bill Ward, Ph.D.
Nandan R. Padmanabhan
Micol Small
Martin Ellison
BOIES, SCHILLER & FLEXNER LLP
401 Wilshire Blvd., Suite 850
Santa Monica, CA 90401
Tel: (310) 752-2400

Steven Holtzman
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
Tel: (510) 874 1000

By: /s/ David E. Moore
David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyrne@potteranderson.com

Counsel for Defendant Apple Inc.

OF COUNSEL:

Stephen S. Korniczky
Martin R. Bader
SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP
12275 El Camino Real, Suite 200
San Diego, CA 92130
Tel: (858) 720-8900

POTTER ANDERSON & CORROON LLP

By: /s/ Philip A. Rovner
Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

*Counsel for Defendants HTC Corporation and
HTC America, Inc.*

OF COUNSEL:

Mitchell G. Stockwell
Richard W. Goldstucker
Shayne E. O'Reilly
KILPATRICK TOWNSEND AND STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309
Tel: (404) 815-6500

Taylor H. Ludlam
KILPATRICK TOWNSEND AND STOCKTON LLP
4208 Six Forks Road, Suite 1400
Raleigh, NC 27609
Tel: (919) 420-1700

POTTER ANDERSON & CORROON LLP

By: /s/ David E. Moore
David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyrne@potteranderson.com

*Counsel for Defendants Lenovo Group Ltd., Lenovo
(United States) Inc. and Motorola Mobility LLC*

OF COUNSEL:

Kevin P.B. Johnson
Victoria F. Maroulis
Todd M. Briggs
Charles M. Stiernberg
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
555 Twin Dolphin Dr., 5th Floor
Redwood Shores, CA 94065
Tel: (650) 801-5100

SHAW KELLER LLP

By: /s/ Andrew E. Russell
John W. Shaw (#3362)
Karen E. Keller (#4489)
Andrew E. Russell (#5382)
David M. Fry (#5486)
I.M. Pei Building
1105 N. Market Street, 12th Floor
Wilmington, DE 19801
Tel: (302) 298-0700
jshaw@shawkeller.com
kkeller@shawkeller.com
arussell@shawkeller.com
dfry@shawkeller.com

*Counsel for Defendants Samsung Electronics Co.,
Ltd. and Samsung Electronics America, Inc.*

OF COUNSEL:

Jay H. Reiziss
Natalie A. Bennett
McDERMOTT WILL & EMERY LLP
500 North Capitol Street, N.W.
Washington, DC 20001
Tel: (202) 756-8000

Charles M. McMahon
Hersh H. Mehta
McDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, IL 60606
Tel: (312) 372-2000

RICHARDS, LAYTON & FINGER, P.A.

By: /s/ Travis S. Hunter
Kelly E. Farnan (#4395)
Travis S. Hunter (#5350)
920 N. King Street
Wilmington, Delaware 19801
Tel: (302) 651-7700
farnan@rlf.com
hunter@rlf.com

Counsel for Defendant ZTE (USA) Inc.

OF COUNSEL:

Richard A. Cederoth
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
Tel: (312) 853-7000

Ellen S. Robbins
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, CA 90013
Tel: (213) 896-6000

Joseph A. Micallef
Wonjoo Suh
Anna M. Weinberg
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Tel: (202) 736-8000

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

By: /s/ Rodger D. Smith II
Rodger D. Smith II (#3778)
Jeremy A. Tigan (#5239)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19801
Tel: (302) 658-9200
rsmith@mnat.com
jtigan@mnat.com

*Counsel for Defendants Microsoft Corporation,
Microsoft Mobile Oy, and Microsoft Mobile Inc.
(f/k/a Nokia Inc.)*

Dated: August 31, 2017
Public Version Dated: September 7, 2017
5383193 / (42622/42637)

